

Position on the Packaging and Packaging Waste Regulation (PPWR) by the Confederation of Swedish Enterprise

This document contains the Confederation of Swedish Enterprise's (hereafter Swedish Enterprise) position on the Packaging and Packaging Waste Regulation. Swedish Enterprise is Sweden's largest business federation, representing over 60 000 member companies in all sectors with almost two million employees. We bring together 49 industry and employer organisations, and this position has been produced in close collaboration with our members.

Introductory comments

Swedish Enterprise welcomes the proposal for a Regulation and considers it an important step towards a more circular economy in Europe and as an important part in implementing the Green Deal and the Circular Economy Action Plan. Preventing and reducing packaging waste, increasing reuse and high-quality material recycling as well as creating a market for recycled materials are all key elements of a circular economy.

Swedish Enterprise welcomes the fact that the European Commission's legislative proposal is in the form of a Regulation. This will provide greater harmonisation in the EU's internal market, which is a precondition for the further development of a circular economy. It is essential that specific national regulations are avoided wherever possible.

In designing the legislation, it is important to strike the correct balance between recycling and reusing materials. Both measures are needed to a greater extent than at present, but they also need to complement each other, in order to ensure the highest possible overall benefit in terms of climate, environment and resource efficiency.

The objectives suggested in the proposal need to be based on scientific and material-specific data regarding the climate and environmental benefits, logistics, hygiene aspects and the importance of a high return rate and low waste and losses. From this perspective, legislation on reuse, for example, needs to be preceded by independent comparisons from a system and life cycle perspective to ensure that we avoid environmental sub-optimisation.

The introduction of requirements in legislation also needs to safeguard already existing well-established and well-functioning systems for the recycling of certain types of packaging. One example is the return-deposit system that Sweden has had for 35 years, one which has been built up through continuous investment. The collection rate for cans and PET bottles in 2021 was 88.2 percent. Any new systems or new rules that are introduced must not risk disrupting that which is currently functioning well.

Swedish Enterprise supports the proposal that the measures should primarily focus on those types of packaging where there is a need for increased circularity and recycling. Swedish Enterprise therefore welcomes the fact that, for example, cardboard and corrugated board used for transport packaging is exempt from the requirement for reuse. There are also currently several other products on the market with well-functioning recycling systems; these should

also be removed from the scope of these requirements. These include fish boxes within the food sector as well as the stretch film and cable ties used in packaging for transport.

It is also important that the requirements in the Regulation are designed in such a way that the material in packaging placed on the market can be recycled several times. This means that the requirements should be designed in order to ensure that the material is recycled to as high a quality as possible and for as long as possible. This will ensure that recycled raw materials of a continued high quality are not incorporated into a product that cannot be included in a recycling process in a later stage.

The requirements set out in the Regulation need to be designed in such a way that they are clear, practical and capable of being monitored. Swedish Enterprise therefore stresses the importance of reducing – as far as possible – the administrative burden and costs that the proposal may entail for companies, not least small- and medium-sized enterprises (SMEs) and micro enterprises. For example, in order to help reduce the administrative burden, the registration requirements in the Regulation may be designed with enough flexibility to allow Member States to gather registration for several legislations in a single place. Requirements for producers to register packaging will be found in several legislations; bringing them together will make it simpler for both authorities and industry.

Standardisation must continue to have a key role in defining the methods and demonstrating compliance with product requirements. Swedish Enterprise favours harmonised standards over technical specifications.

Finally, Swedish Enterprise would also like to draw attention to the very problematic nature of the Commission's proposal in *Article 7(10)*, that they should be given the authority to determine when a price on the free market is excessive. Such a development is completely contrary to the core principle that the transition to a circular economy should be market-driven. Swedish Enterprise believes that ultimately it should be the market that determines the price of a raw material; opening up the possibility of indirectly limiting a market price via legislation is both remarkable and deeply concerning.

Set out below are Swedish Enterprises' comments on specific parts of the draft law, based on chapters and specific articles.

Chapter 1 - General provisions

Article 1 - Subject matter

The circular economy is a tool for addressing several sustainability challenges. However, re-using products may not always represent the most sustainable solution from a holistic perspective. Such an approach is therefore of pivotal importance in the circular transition, where different factors are evaluated to assess what is the most resource-efficient and sustainable approach and solution in each individual case. The circular economy should be seen as a means to an end, not an end in itself.

Therefore, when carrying out the waste hierarchy, measures that provide the best overall environmental outcome should be considered, and the principle of life-cycle thinking should be adopted when regulating packaging. Swedish Enterprise therefore considers it important that the legislation aims to contribute to climate neutrality, not just the circular economy. For this reason, an addition to *Article 1(3)* is proposed.

Art 1.3 This Regulation contributes to the transition to a circular economy and **achieving climate neutrality by 2050**, by laying down measures in line with the hierarchy of waste in accordance with Article 4 of Directive 2008/98/EC.

Furthermore, Swedish Enterprise believes that the application of the scope of the Regulation should be limited to excluding packaging that is necessary to protect essential security interests, such as weapons, ammunition, and defence materials (or defence equipment) intended for specific military purposes. This should also apply to other health and environmental protection interests such as nuclear products or hazardous products and waste whose handling and transport require special protective measures.

It is also very important that the role of bio-based materials is recognised within the Regulation. Renewable materials can replace fossil-based materials in many applications, including plant-based polymers capable of replacing fossil-based plastics. Bio-based products derived from renewable raw materials – including those used for packaging – contribute to achieving climate neutrality targets, where 'renewability' means the ability of a natural resource to replenish and recover over time. Renewable raw materials remain infinite resources as long as growth exceeds consumption. Swedish Enterprise therefore proposes that a new paragraph, referring to the bioeconomy strategy¹, be introduced under *Article 1* in order to clarify the role of renewable materials in circular flows.

Art 1.4 (new) This Regulation contributes to the shifting to a biobased economy, by laying down measures accordance with Bioeconomy Action Plan¹⁾

¹ [Bioeconomy - Publications Office of the EU \(europa.eu\)](https://european-council.europa.eu/media/en/press-communications/infographic/Pages/infographic-bioeconomy-action-plan-2020-2025.aspx)

Article 2 - Scope

Swedish Enterprise welcomes that the proposal deals with the top steps in the waste hierarchy. However, it wishes to emphasise how important it is that the requirements consider the need for measures to encourage the alternatives that contribute to the best overall climate and environmental benefit. This means that waste streams can deviate from the hierarchy where this is justified by life-cycle thinking on the overall impact of the generation and management of such waste (in line with the Waste Directive 2008/98/EC, Article 4(2)).

Art 2.2 This Regulation applies without prejudice to Union regulatory requirements for packaging such as those regarding safety, quality, the protection of health and the hygiene of the packed products, or to transport requirements, as well as without prejudice to the provisions of the Directive 2008/98/EC as regards the management of hazardous waste **and as regards the requirements provided for in paragraph 2 of Article 4 of Directive 2008/98/EC.**

Article 3 - Definitions

Swedish Enterprise would like to particularly stress the importance of ensuring that any new definitions being introduced are clear and harmonised with other legislation as well as any existing standards where definitions are provided. Harmonised definitions in different legislations are desirable for greater clarity, to avoid misunderstandings and to facilitate application. Swedish Enterprise believes that there are a number of problematic definitions in the proposal that are not completely clear and that are in need of further specification and clarification.

The Regulation initially defines several categories or sub-categories of packaging, such as grouped packaging in *Article 3(4)*, transport packaging in *Article 3(4)* and e-commerce packaging in *Article 3(5)*. These are written in such a way that it leaves room for arbitrary interpretation over the scope of the definition, for instance the requirement ‘conceived’ set out in the definitions. Basic prerequisites for the application of the law should include clear definitions of which packaging and materials are covered by the requirements. This should also apply to the responsibility of operators along the entire supply chain and life cycle of a package or packaging material.

Article 3.32 states that the concept of ‘recycled at scale’ means that the infrastructure for collection, sorting and recycling must cover, or be available to, at least 75 percent of the EU population. In addition, *Article 6.2* states that this level of coverage should be achieved by 2035 and should then become a binding requirement for placing packaging on the market. Swedish Enterprise believes that it needs to be further specified what is meant by ‘75 percent of the population’, when it can be considered as having been reached and why it is a relevant measure.

Swedish Enterprise also sees a risk of potential loopholes for rogue actors through the definition of innovative packaging in *Article 3(37)*. This relates to the exemptions from the requirement for recyclability during a five-year period as set out in *Article 6(9)*. It is not clear how great a change in design, materials or manufacturing processes would be required, what type of environmental benefits are referred to and how great these benefits must be if they

are to be considered innovative. Swedish Enterprise believes that these packages also need to be designed to be recyclable from the outset.

Article 3.43 provides an overall definition of plastic, but Swedish Enterprise believes that this needs to be supplemented with an additional paragraph that defines what constitutes plastic packaging. This should be regarded as plastic packaging that consists mainly of plastic, and that does not include, for example, packaging with only a thin plastic film on it. See the proposed new *Article 3(44)* below.

Elsewhere in the legislative proposal (see *Article 43* and *Article 47*), the concept of high-quality recycling is highlighted as a long-term objective for the Regulation. However, there is no basic and clear definition under *Article 3* of what this actually means. Swedish Enterprise welcomes the ambition of developing high-quality recycling based on common and harmonised standards within the EU, but sees a need for this to be further specified.

In addition to the definition of plastic packaging, Swedish Enterprise believes that *Article 3* should be supplemented with an additional definition for "renewable" to emphasise the importance of sustainable and renewable materials in the circular economy, in parallel with an increased amount of recycled materials. See proposal for new *Article 3(22)(b)* below.

Art 3.22 b (new) 'renewable' means the ability for a natural resource to replenish and recover over time and thereby is infinite when growth is greater than consumption.

Art 3.44 (new) 'plastic packaging' means packaging consisting of plastic as the predominant material.

Article 4 - Free movement

Article 4.4 opens up the possibility of individual national solutions and national requirements. Swedish Enterprise wishes to highlight the importance of harmonising legislation as far as possible and stresses that sustainability requirements and information requirements for packaging should be set within the framework of this legislation. Swedish Enterprise therefore believes that *Article 4(4)*, which allows for individual national solutions, should be deleted.

Art 4.4 ~~In case Member States choose to maintain or introduce national sustainability requirements or information requirements additional to those laid down in this Regulation, those requirements shall not conflict with those laid down in this Regulation and the Member States shall not prohibit, restrict or impede the placing on the market of packaging that complies with the requirements under this Regulation for reasons of non-compliance with those national requirements.~~

Chapter 2 - Sustainability requirements

Article 5 - Requirements for substances in packaging

Article 5(4) refers to the delegated acts proposed in *Article 6(5)*. Rather than providing the Commission with a mandate to develop delegated acts to establish the criteria, Swedish Enterprise proposes that CEN, the European standardisation organisation, be given a mandate to develop harmonised standards. Swedish Enterprise believes that common and harmonised standards are generally preferable to delegated acts.

CEN is an established and recognised standardisation body within the EU and has already published CEN standard 13 430 as well as several other well-established standards relating to recycling. Swedish Enterprise wishes to see that representatives from business and industry participate in preparing the guidelines for ‘Design for Recycling’ (DfR) in a transparent and inclusive manner. This should be explicitly set out in the Regulation. This would enable open cooperation and the exchange of expertise in setting ambitious and realistic requirements for the recyclability of packaging.

Art 5.4 Recyclability requirements established in delegated acts adopted pursuant to Article 6(5) shall not restrict the presence of substances in packaging or packaging components for reasons relating primarily to chemical safety. They shall address, as appropriate, substances of concern that negatively affect the re-use and recycling of materials in the packaging in which they are present, and shall, as appropriate, identify the specific substances concerned and their associated criteria and limitations.

Article 6 - Recyclable packaging

To progress towards a more circular society, resources need to be better and more efficiently used. Recycling and reuse of materials needs to increase over current levels; however above all, these measures need to complement each other to a greater extent to maximise the overall benefit in terms of climate, environment and resource efficiency. Swedish Enterprise wishes to particularly emphasise the importance of basing the targets proposed in the proposal on scientific and material-specific data regarding climate and environmental benefits, logistics, hygiene aspects. Swedish Enterprise also wishes to stress the importance of a high return rate and low waste and losses. From this perspective, legislation on reuse, for example, needs to be preceded by independent comparisons from a system and life cycle evaluation to achieve the best possible outcome in terms of environmental and economic sustainability. Swedish Enterprise believes that *Article 6* of the proposal needs further processing and adjustment.

Initially, it is not clear in *Article 6.2* when points 6.2 ((b)-(d)) will be implemented as only (a) and (e) are time-bound. Swedish Enterprise proposes that points (b)-(d) enter into force at the same time as point (a).

Art 6.2 Packaging shall be considered recyclable where it complies with the following:

- (a) it is designed for recycling; and
- (b) it is effectively and efficiently separately collected in accordance with Article 43(1) and (2);
- (c) it is sorted into defined waste streams without affecting the recyclability of other waste streams;
- (d) it can be recycled so that the resulting secondary raw materials are of sufficient quality to substitute the primary raw materials;
- (e) it can be recycled at scale.

Point (a-d) shall apply from 1 January 2030 and point (e) shall apply from 1 January 2035.

Article 6(3) stipulates that companies must meet DfR criteria from 2030, which the European Commission is mandated to develop through delegated acts. Instead of mandating the European Commission to develop delegated acts to establish the criteria, the standardisation organisation CEN should be mandated to develop harmonised standards.

It is particularly important for developing harmonised standards that the definition of recyclable packaging be material-specific. Such a definition should focus on packaging design, recycling technology and infrastructure, and product and material-specific characteristics.

The development of the standards also needs to be coordinated with the entry into force of the legislation. In addition, companies will need a transition period to adapt to the standards developed before the objectives are achieved.

Art 6.3 Recyclable packaging shall, from 1 January 2030, comply with the design for recycling criteria as laid down in the **CEN standards** ~~delegated acts~~ adopted pursuant to paragraph 4 and, from 1 January 2035, also with the recyclability at scale requirements laid down in the **CEN standards** ~~delegated acts~~ adopted pursuant to paragraph 6. Where such packaging complies with those **standards** ~~delegated acts~~, it shall be considered to comply with paragraph 2, points (a) and (e)

In *Article 6.4*, Swedish Enterprise believes that the producer responsibility fee for packaging should reflect the costs of recycling; that is, a package that is easy to recycle should have a lower price than one where it is more difficult, rather than basing it on the amount of recycled content. Swedish Enterprise therefore proposes deleting the sentence concerning the percentage of recycled raw material in plastic packaging. The same applies to *Article 6(11)* and *Article 7(6)*, see below in the text.

The paragraph also uses the term ‘state of the art collection, sorting and recycling processes’. The concept has not previously been defined and risks complicating the understanding of what is required. Swedish Enterprise recommends instead referring to the requirements listed in *Article 6.2*. See also Swedish Enterprise’s supplement to *Article 6.2*.

Art 6.4 The Commission is empowered to adopt delegated acts in accordance with Article 58 shall request the CEN-European Committee for Standardisation, to develop harmonised standards to supplement this Regulation in order to establish design for recycling criteria and recycling performance grades based on the criteria and parameters listed in Table 2 of Annex II for packaging categories listed in Table 1 of that Annex⁷. The Commission is empowered to adopt delegated acts in accordance with Article 58 to lay down the as well as rules concerning the modulation of financial contributions to be paid by producers to comply with their extended producer responsibility obligations set out in Article 40(1), based on the packaging recycling performance grade, and for plastic packaging, the percentage of recycled content. Design-for-recycling criteria shall consider article 6.2 of this regulation state of the art collection, sorting and recycling processes and shall cover all packaging components.

The Commission is empowered to adopt delegated acts in accordance with Article 58 to amend Table 1 of Annex in order to adapt it to scientific and technical development in material and product design, collection, sorting and recycling infrastructure.

In relation to *Article 6(5)*, Swedish Enterprise believes that it should be possible to recycle all packaging, and therefore proposes the clarification of *Article 6(5)*, to make it clear that any packaging that is not recyclable should not be placed on the market. Again, reference should be made to CEN standards rather than to delegated acts.

Art 6.5 From 1 January 2030, packaging should not be ~~considered recyclable~~ placed on the market if it corresponds to performance grade E under the design for recycling criteria established in the CEN standards delegated acts adopted pursuant to paragraph 4 for the packaging category, to which the packaging belongs.

Article 6.8 again uses the term ‘state of the art collection, sorting and recycling processes’. Swedish Enterprise recommends deleting this wording and referring instead to the requirements set out in *Article 6.2*. See also Swedish Enterprise’s supplement for *Article 6.2*.

Art 6.8 [...] All components of a unit of packaging shall be compatible with the state of the art collection, sorting and recycling processes article 6.2 of this regulation and shall not hinder the recyclability of the main body of the unit of packaging.

Consequently, Swedish Enterprise believes that *Article 6.11* should also refer to CEN standards rather than to delegated acts. Swedish Enterprise also proposes deleting the sentence concerning the percentage of recycled raw material in plastic packaging (see the justification for *Article 6.4* above).

Art 6.11 The financial contributions to be paid by producers to comply with their extended producer responsibility obligations as referred to in Article 40 shall be modulated on the basis of the recyclability performance grade, as determined in accordance with the ~~delegated acts~~ **CEN standards** referred to in paragraphs 4 and 6 of this Article ~~and, as regards plastic packaging, also in accordance with the Article 7(6).~~

Swedish Enterprise also proposes reintroducing text that was included in a previous, leaked version of the Regulation. In this version, there were dates for when the delegated acts establishing a method for assessing the collection, sorting and recycling at scale in accordance with Annex II need to be in place. This is proposed for inclusion in a new *Article 6(12)*, see below.

Art 6.12 (new) **Recyclable packaging**

The Commission shall be empowered to:

- (a) by [1 January 2031], adopt delegated acts establishing a methodology to assess the collection, sorting and recycling at scale of packaging in accordance with the essential elements laid down in Annex II, Part C;
- (b) in order to take account of the relevant scientific and technical development in material and product design, collection, sorting and recycling infrastructure, as well as of the delegated act on the assessment of at scale recycling established under point (a), amend the Annex and the delegated acts listed above

Article 7 - Minimum recycled content in plastic packaging

Swedish Enterprise generally supports that the European Commission is presenting proposals for quota obligations on recycled material in packaging, and that these will be gradually increased. The increasing quotas provide predictability for companies, who will know that there will be an increasing demand for recycled material and a gradually increasing inflow of material for recycling. This in turn will encourage businesses to invest in increasing capacity and in developing new methods and innovations. *Articles 7.1* and *7.2* set out the requirements for recycled materials in contact-sensitive packaging. Swedish Enterprise sees that these may be challenging for the industry to achieve. Currently, few polymers other than PET are approved for this purpose, therefore it needs to be ensured that the availability of recycled plastic approved for contact with contact-sensitive materials is developed and installed.

In order for it to be feasible to comply with and follow up on the requirements, Swedish Enterprise also sees that the requirements for the content of recycled raw material applying to each individual package needs to be changed. Instead, some form of average value over time should be set, making it possible to manage varying access to recycled material of sufficiently good quality. At the same time, it must ensure that SME, with a lower proportion of

products on the market, are not unfairly disadvantaged than the larger market players by indirectly higher requirements.

Swedish Enterprise believes that the definition of ‘plastic’ allows for a very broad interpretation of what is considered fall into its scope. Compostable plastic packaging is exempt from paragraphs 1 and 2 under *Article 7*, and Swedish Enterprise believes that bio-based and renewable plastics should also be exempt from the requirements for recycled content. This includes printing inks, adhesives and coatings used on packaging - see Swedish Enterprise's added definition above for what is to be considered as plastic packaging.

Art 7.4 Paragraphs 1 and 2 shall not apply to compostable plastic packaging as well as to plastic packaging based on renewable raw materials, to inks, adhesives, varnishes and coatings used on packaging.

As explained above, in relation to *Article 6(4)*, it is also proposed to delete *Article 7.6*.

Art 7.6 ~~By 1 January 2030, the financial contributions paid by producers to comply with their extended producer responsibility obligations as laid down in Article 40 shall be modulated based on the percentage of recycled content used in the packaging.~~

Swedish Enterprise wishes to stress the importance of allowing exceptions to the quota obligation at times when the supply of recycled material in demand is so low that it indirectly leads to an extremely high market price. A secure supply of recycled material is vital for ensuring that it is possible to comply with the requirements of this Regulation. At the same time, Swedish Enterprise sees it as highly problematic that the European Commission should be authorised to determine where a price on the free market is too high. Such a development is completely contrary to the concept that the transition to a circular economy should be market-driven. Ultimately, it should be the market that determines the price of a raw material and opening up the possibility of indirectly limiting a market price in legislation is worrying.

Swedish Enterprise proposes that the authorisation for the European Commission to develop delegated acts to reduce the requirements for recycled material in *Article 7.10* should remain. However, an additional requirement should be introduced necessitating regular reporting from the European Commission to the European Parliament and the Council of the European Union on the possibility of complying with the requirements.

Art 7.10 Where justified by the lack of availability ~~that may result in or excessive prices of specific recycled plastics that may have~~ adverse effects on **European market development**, human or animal health, security of food supply or the environment, making compliance with the minimum percentages of recycled content set out in paragraphs 1 and 2 excessively difficult, the Commission shall be empowered to adopt a delegated act in accordance with Article 58 to amend paragraphs 1 and 2 by adjusting the minimum percentages accordingly. **In addition, the Commission shall regularly report to the European Parliament and the Council of the European Union on the reasonable possibilities of meeting the requirements in paragraph 1 and 2.** In evaluating the justification of such adjustment, the Commission shall assess requests from natural or legal persons to be accompanied by relevant information and data on the market situation for this post-consumer plastic waste and best available evidence regarding the related risks to human or animal health, to the security of food supply or to the environment.

Article 8 - Compostable packaging

Swedish Enterprise believes that there are considerable risks in using compostable plastic, as it risks degrading the quality of recycled plastic raw material if the plastic streams are mixed. It is therefore important to ensure that compostable plastic is only used in those few cases where there is no risk of the compostable plastic ending up in the regular packaging collection. Swedish Enterprise therefore proposes the following deletion in *Article 8(3)*.

Art 8.3 ‘By [OP: Please insert the date = 24 months from the date of entry into force of this Regulation], packaging other than that referred to in paragraphs 1 and 2, ~~including packaging made of biodegradable plastic polymers, shall allow material recycling without affecting the recyclability of other waste streams~~ not be manufactured from compostable packaging.’

Chapter 3 - Labelling, marking and information requirements

Article 11 - Labelling of packaging

This article deals with various labelling requirements for packaging placed on the market. In general, Swedish Enterprise recommends that labelling should be harmonised within the European Union, it should not overlap and should be clear to the consumer. It is also important that unnecessary information is not included on the packaging. This is particularly important as there are also requirements that the size of the packaging should be minimised and, in the future, will also contain a digital product passport so that the consumer can access information before the purchase.

In those cases where packaging is included in a return-deposit system, it is important that there is no risk of the packaging being disposed of as part of the regular material collection,

simply because the packaging also has a recycling symbol. Swedish Enterprise therefore believes that a deletion to the second paragraph of *Article 11(1)* is necessary; see below.

Art 11.1 From [OP: Please insert the date = 42 months after the entry into force of this Regulation], packaging shall be marked with a label containing information on its material composition. This obligation does not apply to transport packaging. However, it applies to e-commerce packaging.

Packaging subject to deposit and return systems referred to in Article 44(1) shall, ~~in addition to the labelling referred to in the first subparagraph~~, be marked with a harmonised label established in the relevant implementing act adopted pursuant to paragraph 5.

Article 11(1) also concerns labelling requirements on the material composition of the packaging, the meaning of which is clarified in recital 45. This states that packaging must be labelled with symbols that will help the consumer to sort the packaging correctly. The European Commission should therefore clarify exactly what is meant by ‘material composition’.

It is also important that requirements for labelling and information on packaging are coordinated with information requirements that have already been implemented. For example, packaging must already declare the presence of so-called ‘candidate substances’ and be notified to ECHA's SCIP database. It is important to avoid provisions that will entail double reporting and place an excessive administrative burden on industry.

Chapter 4 - Obligations of economic operators other than the obligations in Chapters 5 and 7

Article 21 - Obligation related to excessive packaging

This article requires operators who use transport packaging and e-commerce packaging in their operations to ensure that the empty space ratio in the packaging is minimised. It proposes, among other things, that bubble wrap, wood wool and Styrofoam pieces should be considered as empty space. Swedish Enterprise believes that it is important to take measures to minimise the amount of unnecessary, empty surface area and volume in packaging. However, it also believes that the Regulation needs to take into account the fact that different products require different types of packaging to fulfil their function, ensure basic product safety or to protect the product during transport. It is also important to consider that some products - such as crisps, muesli and powders – tend to ‘settle’ following the filling process, during transport and in the distribution phase. For this reason, Swedish Enterprise believes that the text needs to reflect the fact that measures to minimise empty space must be taken during filling; see below.

It is also problematic to set a strict requirement, from 2030, for a maximum of 40 percent of empty space or volume in a package. Swedish Enterprise believes that compliance with this requirement should be set at company level, rather than per individual package or per

individual shipment. This way, it would allow business and industry more favourable conditions for change.

Art 21.2 (c) (new) *Empty space need to be reduced to the minimum necessary at the filling point to ensure that the empty space ratio is maximum 40 %.*

Article 22 - Restrictions on use of certain packaging formats

The Regulation proposes to ban a range of single-use packaging types for serving of food and drink from 2030, and to ban single-use packaging for small accessories one year following the entry into force of the Regulation. Swedish Enterprise considers this ban to be overly strict and far-reaching. It is extremely important to consider the fact that, in many cases, disposable items can be environmentally favourable compared to reusable packaging. Increased use of reusable packaging can lead to, among other things, increased transport and increased water consumption. For this reason, it is crucial that all proposals are evaluated using a life cycle perspective, where the overall environmental and climate benefits and burdens become clearer. Swedish Enterprise does not believe that sufficient evaluations have been undertaken in connection with the proposal to ban certain disposable packaging.

Swedish Enterprise believes that, even after 2030, it should be permitted to use recyclable disposable packaging where it is preferable from an environmental and climate perspective. In particular, this applies to micro and small businesses, which will encounter considerable costs and difficulties were a reusable packaging system to become mandatory.

Concerning the ban on single-use packaging for accessories, there is also a considerable risk that reusable packaging will lead to an increased environmental and climate impact, as such packaging risks leaking from reuse systems. Swedish Enterprise therefore favours the granting of exceptions where it is advantageous to do so from an environmental and climate perspective, and that micro and small businesses are exempted when it means a significantly more expensive transition for them. The European Commission should continue to work on this section of its legislative proposal in close dialogue and collaboration with the industries concerned.

In addition, Swedish Enterprise believes that, for the sake of legal certainty and clarity, an exhaustive list of which disposable articles are prohibited should be provided in *Annex V*, rather than listing a number of examples.

Swedish Enterprise also believes that there is an inherent problem in *Article 22*, as the associated *Annex V* states that a number of single-use plastic items are to be banned, while other types of material are not covered by the ban. This position has not been preceded by any evaluation of the environmental and climate benefits of using different types of material, nor of the overall environmental benefit. An illustrative example is disposable packaging for fruit and vegetables, which reduces food waste throughout the distribution chain.

Nor does Swedish Enterprise believe that the European Commission should be able to ban additional types of packaging through delegated acts and amendments to *Annex V*, as stated

in *Article 22(4)*. This type of ban needs to follow a much more transparent and thorough legislative process.

Article 25 - Obligations related to refill

The Regulation proposes that there should be a system for refilling consumer packaging for food and foodstuffs. Swedish Enterprise wishes to emphasise the importance of making these systems entirely voluntary on the part of the operator. This is a result of, among other things, food safety and hygiene concerns and the issue of responsibility linked to food. In the event that a company chooses to offer to refill a customer's or visitor's own container, it is important that they also have the right to refuse such refilling in cases where food safety or hygiene requirements cannot be met. Swedish Enterprise therefore believes that *Annex VI, part C, point (d)* should be deleted, or elucidated to make it clear that companies are not responsible for guests' or visitors' own containers.

Article 26 - Re-use and refill targets

Article 26 proposes that those distributors providing beverages and prepared-and-packaged take-away food intended for immediate consumption shall be obliged to do so in reusable packaging in a reuse system or by enabling refill. For hot or cold drinks, the target levels will be set at 20 percent from 2030 and 80 percent from 2040. The corresponding percentages for take-away food are 10 percent and 40 percent by 2030 and 2040, respectively.

Swedish Enterprise finds these extremely high reuse targets problematic and believes that the overall environmental and climate benefits of such targets must be evaluated much more closely. As an example, glass bottles for wine and spirits are currently crushed in Sweden in order to make new bottles; however, under the European Commission's legislative proposal, they would have to be sent back to the producer country to be refilled.

Reusable packaging can often require more material, which can be heavier and require a system for return handling. This in turn can mean further transport and increased water consumption for cleaning and could also mean significant cost increases for many companies, not least SMEs.

As an example, Swedish Enterprise would like to refer to the attempt to introduce reusable PET bottles in Sweden. For some years in the 1980s and 1990s, the return-deposit system was based on the PET bottles collected being reused by being washed and then refilled with drinks. This system has now been changed – for good reason – to recycling the bottles collected and then using the material to making new bottles. The change is based on the fact that it was difficult to ensure the food safety and hygiene of the reusable PET bottles when consumers returned them to the return-deposit system after using them to store something other than drinks, such as solvents, which migrated into the material and could not be washed away. The bottles also had scratches that made them difficult to wash. Therefore the Swedish Enterprise believes that reusing PET bottles is not a safe alternative for any type of beverage.

For this reason, Swedish Enterprise believes that there should be a thorough evaluation of the overall, true environmental and climate impact by 2030, with the aim of revising the targets for 2040, depending on the outcome of the evaluation.

The article also proposes exempting affected businesses from the above-mentioned obligation if they place less than 1000 kg of packaging on the market, have a sales area of less than 100m² or are microenterprises. It is positive that small companies are exempted, but Swedish Enterprise believes that there are reasons for introducing additional exemptions based on, among other things, the location of the business, hygiene reasons and when disposable items prove to be the most sustainable alternative.

In *Article 26*, Swedish Enterprise wishes to emphasise the importance of an overall perspective in the legislation, where requirements for reusability are set in relation to the current purpose of the packaging and its handling. For some transport packaging, there are currently no reusable alternatives, for example for cable ties and plastic film as specified in *Article 26.9*. The same applies to shrink and stretch film, which is also currently recycled to a very high level. All these types of transport packaging also fulfil an important safety function, both for the goods and those who handle them. These types of transport packaging should therefore be made exempt from reusable requirements.

Furthermore, Swedish Enterprise believes that it is important that the percentage targets set in the legislation have been preceded by a rigorous assessment to ensure compliance with the basic principles of proportionality and effectiveness. It should also be ensured that the requirements are set at realistic limits for the industry sectors concerned.

Chapter 6 - Conformity of packaging

Article 32 - Common technical specifications

The European Commission proposes, in *Article 32(2)*, that ‘common specifications’ may be developed by the European Commission as a fallback solution in circumstances where harmonised standards are not available.

Swedish Enterprise believes that the European Commission should generally refrain from issuing its own technical specifications in implementing acts. This approach should only be used in exceptional cases, as it departs from the working method of the ‘New Approach’ and risks limiting technological development and innovation. In circumstances where technical specifications are used, their development must follow strict criteria established in close dialogue with stakeholders, primarily standardisation organisations and relevant industries.

Rather than the European Commission developing technical specifications, joint efforts should be made to remove the bottlenecks in the process for developing harmonised standards, in order to establish a more efficient process. Swedish Enterprise proposes that the European Commission initiates a dialogue with the standardisation organisations and the business community, in order to identify and remove bottlenecks in the system.

Swedish Enterprise believes that *points (a) and (b) in Article 32* should be deleted (see text in red), as delays in the process or the fact that the standardisation organisations say ‘no’ are

not grounds for producing technical specifications. This paragraph should instead be replaced by a new version (see text in red), which states that technical specifications should only be developed when there is agreement with the standardisation organisations that it is appropriate to do so. *Article 32(3)* should also include a provision stating that any specifications developed should be withdrawn when a new standard is in place.

Art 32.2: *The Commission may, by means of implementing acts, establish common technical specifications for the requirements set out in Articles 5 to 11 and Article 24 where the following conditions are fulfilled:*

- ~~(a) there is no harmonised standard covering the relevant requirements the reference of which is published in the *Official Journal of the European Union* or the standard does not satisfy the requirements it aims to cover;~~
- ~~(b) the Commission has requested, pursuant to Article 10(1) of Regulation 1025/2012, one or more European standardisation organisations to draft or to revise a harmonised standard for the requirements set out in Articles 5 to 11 and Article 24 and either of the following conditions are fulfilled:~~
 - ~~(i) the request has not been accepted by any of the European standardisation organisations to which the request was addressed;~~
 - ~~(ii) the request has been accepted by at least one of the European standardisation organisations to which the request was addressed, but the standards requested:~~
 - ~~— are not adopted within the deadline set in the request;~~
 - ~~— do not comply with the request;~~
 - ~~— are not fully in line with the requirements they aim to cover.~~

(a) where there is agreement with the standardisation organisations that it is appropriate

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 59(3).

3. When references of a harmonised standard are published in the *Official Journal of the European Union*, the Commission shall assess whether implementing acts referred to in paragraph 2, or parts thereof which cover the same requirements set out in Articles 5 to 11 and Article 24 need to be repealed or amended.

Article 38 - Prevention of packaging waste

Article 38 allows Member States to introduce national measures (including economic instruments) to reduce the generation of packaging waste and the environmental impact of packaging. This provision conflicts with the harmonisation objective of the Regulation and makes it difficult for companies to operate on a level playing field in the internal market. Previous experience with national environmental criteria and economic instruments used to achieve environmental objectives shows that such measures risk distorting competition in the internal market. An example of this is the national chemical tax on electronics.

A general reference to general legal principles of proportionality and non-discrimination in *Article 38(3)* of the Regulation is not sufficient to ensure protection of a level playing field for businesses within the EU. A basic prerequisite for ensuring harmonisation, and that each Member State achieves the objectives set out in the law, is harmonised guidelines and conditions for national measures and instruments.

Chapter 12 - Final Provisions

Article 62 - Penalties

Swedish Enterprise is supportive of the legislative proposal being presented as a Regulation, as this increases harmonisation in the internal market. To ensure that compliance with the legislation takes place in a harmonised manner, it is important that the level of sanctions in the various Member States does not differ so widely that it risks affecting competition between the countries' companies.

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